

MEMORANDUM OF UNDERSTANDING

STATE-FEDERAL ACTION PLAN FOR EXPEDITED LEVEE REPAIR

Responding to the Governor's identification of critical levee erosion sites in the Sacramento River valley as the State's highest priority for emergency repairs, and building on existing interagency coordination actions, the undersigned Federal agencies (collectively "the Federal agencies") and the California Department of Water Resources commit to the following Action Plan:

A. State and Federal Agency Commitments

The Federal agencies are committed to issuing all Federal permits and approvals required for the work needed to repair the critical levee erosion sites identified in the Governor's February 24, 2006, emergency proclamation as well as additional sites on Federal project levees identified by the Department of Water Resources as expeditiously as possible to allow construction to be completed on all critical erosion sites by November 1, 2006.

To that end, and subject to applicable law, the Federal agencies and the Department of Water Resources agree to adhere to the critical path timeline that is attached to this agreement as Exhibit A ("Critical Path Timeline"); the Critical Path Timeline is designed to ensure efficient, coordinated, and timely actions for the environmental review and permitting of the levee repair projects.

The Federal agencies agree to consult and cooperate with the Department of Water Resources, and with other appropriate state and local agencies as needed, to ensure that all of the deadlines in the Critical Path Timeline are met. The Federal agencies and the Department of Water Resources agree to take all appropriate steps, including the use of any applicable emergency procedures, to ensure that all of the commitments set forth in this agreement are satisfied. The Critical Path Timeline is designed to ensure completion of all regulatory processes for all sites by June 21, 2006. The purpose of this is to clear construction to commence in July for all sites.

B. Federal Acceptance of State Accelerated Cost-Share Funding.

California will accelerate its provision of State funds for immediate use by the Army Corps of Engineers (Corps) for construction of the Sacramento River Bank Protection Project. On April 20, 2006 the Corps notified Congress of its intention to accept these advance contributions. The Corps must receive the accelerated funding by May 15th to complete the repairs by November 2006 -- a year ahead of schedule.

C. Crediting of State Funding Toward Cost Share Commitment

Consistent with the direction from the President, articulated in the April 21, 2006 statement by James L. Connaughton, the Corps will work with the California Department of Water Resources on appropriate crediting to the State of costs it incurs in carrying out repairs on the 29 critical levee erosion sites, including establishing a process for working with Congress on any mutually-agreed authority necessary for crediting of funds advanced by the State and for crediting the State for any levee repair work performed by the Department of Water Resources on federal project levees pursuant to the February 24, 2006 emergency proclamation issued by Governor Schwarzenegger.

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D. Coordination through the California Department of Water Resources' Levee Repair Executive Oversight Committee.

Each of the Federal agencies is committed to working with the Department of Water Resources and other members of the Committee to expedite actions within their jurisdiction to ensure that the schedule set forth in the attached Critical Path Timeline is met. The Critical Path Timeline will be used by the Federal agencies and the Department of Water Resources to ensure that the critical levee erosion site repair projects are designed, approved, and implemented such that construction is authorized to proceed within the timeframe set forth above, while ensuring that the projects avoid jeopardizing threatened or endangered species, maintain water quality, and consideration of the relevant environmental effects of the proposed projects. If at any time it appears to any of the Federal agencies that a levee project may not be designed, approved, or implemented on schedule due to a factor within the jurisdiction or expertise of a Federal agency, the Federal agency shall communicate that information to the Committee and the Corps shall communicate this information to the Assistant Secretary of the Army (Civil Works). The Assistant Secretary shall ensure that any delaying factor is addressed expeditiously and shall apprise the Council on Environmental Quality (CEQ) and OMB regarding any measures necessary, including the use of applicable emergency procedures, to ensure that the schedule set forth in the Critical Path Timeline is met.

E. Consultation under the Endangered Species Act (ESA).

The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) have committed to expedite any environmental review required for levee repair efforts using appropriate legal procedures, including use of the Section 7 Emergency Consultation Procedures to the extent necessary to address response activities that must be taken to prevent imminent loss of human life or property. FWS and NMFS will take all appropriate actions to ensure that the schedule set forth in the Critical Path Timeline is met. If at any time it appears to FWS or NMFS that any of the actions contained in the Critical Path Timeline within their respective jurisdiction may not occur according to the prescribed schedule, or that Section 7 consultation on a levee project may not be completed on schedule, FWS or NMFS shall communicate that information to the Committee and the Corps shall communicate this information to the Assistant Secretary of the Army (Civil Works). The Assistant Secretary shall coordinate with the Department of Commerce or the Department of the Interior, as appropriate, and shall apprise CEQ and OMB regarding any measures necessary, including the use of applicable emergency procedures, to ensure that the schedule set forth in the Critical Path Timeline is met.

F. Clean Water Act Permitting and Authorizations.

The Corps has committed to expedite approval of proposed levee repair projects using appropriate legal procedures, including applicable provisions for emergencies and use of applicable nationwide permits for maintenance and repair of levees. For identified levee projects, the Corps will take all appropriate actions to ensure that the schedule set forth in the Critical Path Timeline is met. If at any time it appears to the Corps that any of the actions contained in the Critical Path Timeline within its jurisdiction may not occur according to the prescribed schedule, or that required permits or authorizations on a levee project may not be completed on schedule, the Corps shall communicate that information to the Committee and the Assistant Secretary of the Army (Civil Works). The Assistant Secretary shall ensure that any

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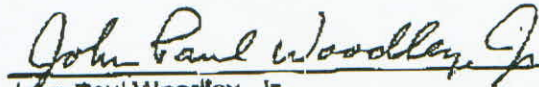
delaying factor is addressed expeditiously and shall apprise CEQ and OMB regarding any measures necessary, including the use of and reliance upon any applicable emergency procedures, to ensure that the schedule set forth in the Critical Path Timeline is met.

G. Environmental Analysis and Decisions under National Environmental Policy Act.


The Corps shall ensure that environmental analysis and documentation of decision-making regarding proposals for levee repair projects is conducted in compliance with the National Environmental Policy Act (NEPA) and CEQ guidance. For identified levee projects, the Corps will take all appropriate actions to ensure that the schedule set forth in the Critical Path Timeline is met. If at any time it appears to the Corps or any co-lead or cooperating agency that NEPA documentation for a levee project decision may not be completed on schedule, the Corps shall communicate that information to the Committee and the Assistant Secretary of the Army (Civil Works). The Assistant Secretary shall ensure that any delaying factor is addressed expeditiously and shall apprise CEQ and OMB regarding any measures necessary, including the use of applicable emergency procedures, to ensure that the schedule set forth in the Critical Path Timeline is met.


Lester A. Snow
Director, California Department of Water Resources

Dated: April 30, 2006


John Paul Woodley, Jr.
Assistant Secretary of the Army (Civil Works)

Dated: May 1, 2006


Dr. William T. Hogarth
Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration

Dated: 1 May, 2006


H. Dale Hall
Director, U.S. Fish and Wildlife Service

Dated: 5/11, 2006

EXHIBIT A

CRITICAL PATH TIMELINE FOR CALIFORNIA EMERGENCY LEVEE EROSION SITE REPAIRS

Week of April 24: Complete cultural resources field survey for Department of Water Resources ("DWR") lead sites, and begin coordination with State Historic Preservation Officer based on survey results. Decision by Army Corps of Engineers ("Corps") on use of nationwide and/or regional permits for all of the DWR-lead sites. Corps determination of the need for National Environmental Policy Act ("NEPA") review for all Corps-lead sites.

May 2-3: Site visit by Corps, US Fish & Wildlife Service ("USFWS"), NOAA Fisheries ("NOAA"), DWR and other appropriate State agencies, with DWR providing all available project design information (including, at a minimum, length and volume information).

May 3: DWR submits to Corps all necessary information for the Section 215 agreement to ensure federal credit for Cache Creek sites.

Immediately, through May 8: Coordination of federal agencies in the preparation of biological assessment ("BA"). On May 8, DWR completes draft BA for DWR lead sites, and Corps completes draft BA for Corps lead sites.

May 8: Corps provides invoice to DWR for advance funding to be provided by DWR for Corps lead sites.

May 12: DWR provides the Corps with proposed final design information for all DWR lead sites, in accordance with the schedule previously provided to the Executive Oversight Committee (3 sites currently completed; 4 sites by April 28; 8 sites by May 5; and 4 sites by May 12).

Week of May 15: Draft Environmental Assessment ("EA") for Corps-lead sites released for public review.

May 15: Any federal agency comments provided on BAs for all sites. Full advanced funding from State provided to Corps.

May 15-May 22: Resolution of all federal agency comments on all BAs for all sites.

May 22: Decision on use of programmatic consultations and/or informal consultation for all sites (including Corps-lead sites). Expedited preparation of a biological opinion ("BO") for sites requiring formal consultation under Endangered Species Act ("ESA").

May 31: Complete all regulatory decisions pursuant to all applicable regulatory processes, and all other applicable federal processes, for Cache Creek sites, thereby clearing construction to commence in June at those sites to the extent allowed by applicable law. Close of public comment period on EA for all Corps-lead sites. Evaluation of progress under all regulatory processes for all sites, and immediate invocation of emergency procedures or work to proceed in accordance with other methods determined to be in compliance with ESA Section 7(d) as needed.

EXHIBIT A
CRITICAL PATH TIMELINE FOR CALIFORNIA
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June 7: Corps receives all necessary Water Quality Certification information from DWR and Regional Water Quality Control Board. Draft BO, as needed, prepared by USFWS and/or NOAA (with assistance from DWR and its consultants, as appropriate). Immediate invocation of emergency procedures, or other appropriate measures consistent with ESA Section 7(d), if date missed.

June 9: Notice to begin construction on Cache Creek RM 0.8, 1.1, and 2.4.

June 15: Resolution of all outstanding issues regarding the draft BO. Final EA complete for Corps-lead sites. BO from USFWS and NOAA if programmatic BO is applicable, or if USFWS and NOAA concur in not likely to adversely affect determination.

June 16: EA and decision document signed for Corps lead sites.

June 20: Completion of Section 215 agreement to ensure federal credit for Cache Creek sites.

June 21: Completion of all regulatory and other applicable federal processes for all sites, clearing construction to commence for all sites to the extent allowed by applicable law. Immediate invocation of emergency procedures, or other appropriate measures consistent with ESA Section 7(d), if date missed. BO for Pocket Erosion sites and construction to commence August 1, or earlier if no Delta Smelt habitat.

Consistent with applicable law, construction on Corps-lead sites begin in July-August.